

OCHOA

PART 2

<p style="text-align: right;">Page 122</p> <p>1 BY MR. BESSETTE: 12:28:40</p> <p>2 Q. What was unique about Adams' business 12:28:41</p> <p>3 model that made it especially vulnerable to gray 12:28:44</p> <p>4 marketing? 12:28:48</p> <p>5 A. I think I have laid that out. It is a 12:28:48</p> <p>6 different question from the first question you 12:28:50</p> <p>7 asked, for which I also had a response 12:28:54</p> <p>8 But there were a number of things 12:28:56</p> <p>9 that were particular about Adams' business plan that 12:28:57</p> <p>10 made it particularly directed to gray marketers. 12:28:59</p> <p>11 Its high profit margins, high retailer profit 12:29:04</p> <p>12 margins were one. Its desire to restrict sales to 12:29:07</p> <p>13 its authorized retailers -- I'm sorry. To restrict, 12:29:18</p> <p>14 to maintain sales through its authorized retailers 12:29:21</p> <p>15 and to maintain strong and exclusive relationships 12:29:25</p> <p>16 with those authorized retailers. In addition, the 12:29:28</p> <p>17 company had plans to internationalize. And there 12:29:32</p> <p>18 are others that are listed in my report. 12:29:35</p> <p>19 Q. Is wanting to offer your retailers, 12:29:43</p> <p>20 you know, high margins, is that unique in the 12:29:47</p> <p>21 business world? 12:29:50</p> <p>22 A. Wanting to offer your retailers good 12:29:51</p> <p>23 profit margins is not unique in the business world, 12:29:56</p> <p>24 no. 12:29:58</p>	<p style="text-align: right;">Page 124</p> <p>1 particular or unique to Adams Golf. It was how they 12:31:19</p> <p>2 were engaging in each of those that was. 12:31:24</p> <p>3 BY MR. BESSETTE: 12:31:24</p> <p>4 Q. How were they engaging in those that 12:31:27</p> <p>5 made it unique? 12:31:30</p> <p>6 A. For example, the pricing policies and 12:31:31</p> <p>7 the high built-in retailer profits -- 12:31:32</p> <p>8 Q. I'm sorry. Let's stick with 1, 2 and 12:31:35</p> <p>9 3. 12:31:38</p> <p>10 A. That was Number 3. 12:31:38</p> <p>11 MR. COLLINS: Wait, wait, wait, wait 12:31:40</p> <p>12 Let's have a question. She was answering 3, and you 12:31:41</p> <p>13 cut her off. 12:31:44</p> <p>14 MR. BESSETTE: That's fine. I thought 12:31:46</p> <p>15 it was four, so go ahead. 12:31:46</p> <p>16 MR. COLLINS: Not a problem. 12:31:48</p> <p>17 Do you have the question in mind? 12:31:48</p> <p>18 THE WITNESS: Yes. 12:31:50</p> <p>19 MR. COLLINS: Go ahead then 12:31:50</p> <p>20 BY THE WITNESS: 12:31:53</p> <p>21 A. So for example, as to Number 3, Adams 12:31:53</p> <p>22 Golf in its road trip presentation stated and made 12:31:57</p> <p>23 clear that it offered a significantly higher profit 12:32:00</p> <p>24 margin than its competitors. That made it unique, 12:32:04</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Is wanting to internationalize unique? 12:29:58</p> <p>2 A. It is not unique. The methods, the 12:30:01</p> <p>3 particularities of how Adams was going about each of 12:30:04</p> <p>4 those was unique. 12:30:08</p> <p>5 Q. Well, let's go to Paragraph 5A of your 12:30:09</p> <p>6 rebuttal, where I think you list the elements that 12:30:17</p> <p>7 make Adams' business model particularly attractive 12:30:20</p> <p>8 to gray marketers. You write these included, one, 12:30:26</p> <p>9 maintaining the strength of the Tight Lies brand; 12:30:32</p> <p>10 two, strong and exclusive relationships with its 12:30:36</p> <p>11 distributors and retailers; three, pricing policies 12:30:40</p> <p>12 which included high built-in retailer profit; four, 12:30:41</p> <p>13 reliance on its in-house sales force and customer 12:30:45</p> <p>14 service infrastructure to maintain its competitive 12:30:49</p> <p>15 strengths; and five, an intention to further 12:30:52</p> <p>16 internationalize. So looking at 1, 2 and 3, 12:30:57</p> <p>17 Professor, aren't these strategies that every golf 12:31:03</p> <p>18 club manufacture wants? In other words, are those 12:31:05</p> <p>19 unique to Adams Golf? 12:31:07</p> <p>20 MR. COLLINS: Asked and answered. 12:31:09</p> <p>21 Go ahead. 12:31:10</p> <p>22 BY THE WITNESS: 12:31:11</p> <p>23 A. Yeah. As I stated, those strategies 12:31:12</p> <p>24 sort of in a broad sweep are not necessarily 12:31:14</p>	<p style="text-align: right;">Page 125</p> <p>1 because it created a wider in gap which gray 12:32:08</p> <p>2 marketers could play, especially more space for 12:32:13</p> <p>3 arbitrage to occur. 12:32:16</p> <p>4 BY MR. BESSETTE: 12:32:18</p> <p>5 Q. How about one and two? 12:32:19</p> <p>6 A. Maintaining the strength of the Tight 12:32:21</p> <p>7 Lies brand. Adams Golf was a new company that was 12:32:24</p> <p>8 trying to enter into the golf consumer mind. And 12:32:28</p> <p>9 their desire was to do so in a way that made it a 12:32:33</p> <p>10 highly desirable, highly sought after, highly 12:32:36</p> <p>11 prestigious brand. The fact that Adams was a new 12:32:41</p> <p>12 company seeking that image made it unique 12:32:46</p> <p>13 Q. And Number 2, what is unique about 12:32:49</p> <p>14 that? 12:32:53</p> <p>15 A. What is unique about that is that -- 12:32:53</p> <p>16 well, first, I don't know -- I don't know in the 12:32:57</p> <p>17 golf industry as a whole, I haven't studied the 12:33:00</p> <p>18 business models of every golf company in the golf 12:33:04</p> <p>19 industry to know the steps that they take to ensure 12:33:08</p> <p>20 strong and exclusive relationships with their 12:33:11</p> <p>21 distributors and retailers. But I can tell you that 12:33:14</p> <p>22 having strong and exclusive relationships with 12:33:20</p> <p>23 retailers as a business strategy creates among the 12:33:22</p> <p>24 reasons to have that strong and exclusive 12:33:31</p>

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1 BY THE WITNESS: 12:56:04

2 A. I don't remember exactly what Myers & 12:56:05

3 Griffith -- what Myers & Griffith's analysis of that 12:56:08

4 question is. 12:56:08

5 BY MR. BESSETTE: 12:56:11

6 Q. Okay. Do you recall them saying that 12:56:11

7 over production is one factor within management 12:56:12

8 control that causes gray markets to thrive? 12:56:15

9 A. Again, I don't recall that Myers & 12:56:19

10 Griffith stated that, but that would certainly be 12:56:22

11 one. 12:56:24

12 Q. Do you have any evidence that Adams 12:56:24

13 Golf overproduced clubs? 12:56:29

14 A. Overproduced, no. 12:56:29

15 Q. By the way, does Adams by definition 12:56:30

16 have any control over factors that are outside of 12:56:35

17 management's control that cause gray markets to 12:56:38

18 thrive? 12:56:40

19 A. By definition, no 12:56:40

20 Q. In practice, have you seen that? I'm 12:56:42

21 sorry, in academic literature have you seen to the 12:56:47

22 contrary any indications that something 12:56:50

23 characterized as outside of management control 12:56:53

24 management really does have control over? 12:56:56

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1 A. Not that I recall, though I can 12:57:04

2 imagine -- sitting here and speculating, I could 12:57:07

3 imagine, for example, that a company might take on 12:57:10

4 lobbying efforts to try to effect sort of larger 12:57:14

5 economic conditions that might make gray marketing 12:57:18

6 viable, but that's speculative 12:57:23

7 Q. Have you ever been involved in any 12:57:24

8 IPOs? 12:57:28

9 A. Yes. 12:57:29

10 Q. How many? 12:57:33

11 A. One 12:57:34

12 Q. Which one was that? 12:57:35

13 A. I don't remember the name of the 12:57:36

14 company. It was a Polish copper extraction and 12:57:38

15 production company. I was involved with its IPO 12:57:44

16 when I was a summer associate at Clifford Chance 12:57:51

17 Q. Was this a company traded on an 12:57:56

18 American exchange? 12:58:01

19 A. I think it was a 144(a) offering. 12:58:01

20 Q. And what's that? 12:58:04

21 A. If I can remember, A 144(a) offering 12:58:05

22 allows for qualified investors to purchase 12:58:12

23 securities without the company -- I'm sorry. 12:58:20

24 Qualified investors in the United States to purchase 12:58:25

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1 securities in the company without the company going 12:58:29

2 through the same rigorous disclosure requirements 12:58:31

3 that are required under the securities laws. 12:58:34

4 Q. Okay. So the involvement you had in 12:58:37

5 the one you just talked about was as a summer 12:58:44

6 associate. So you were not a lawyer at the time? 12:58:48

7 A. Correct. 12:58:50

8 Q. And it was an offering that didn't 12:58:50

9 have the same disclosure requirements as the 12:58:52

10 securities laws that govern IPOs in the United 12:58:56

11 States. Do I understand that right? 12:59:00

12 MR. COLLINS: Calls for a legal 12:59:01

13 conclusion. 12:59:03

14 BY MR. BESSETTE: 12:59:03

15 Q. To the best of your understanding? 12:59:04

16 MR. COLLINS: Foundation. 12:59:05

17 Go ahead. 12:59:07

18 BY THE WITNESS: 12:59:07

19 A. To the best of my understanding -- 12:59:07

20 actually, if you can restate the question, that 12:59:09

21 would be great. Can you read it back? 12:59:11

22 MR. BESSETTE: Can you repeat it, 12:59:11

23 please? 12:59:11

24 (Record read.) 12:59:26

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1 BY THE WITNESS: 12:59:26

2 A. Yeah. I am just going to say I'm not 12:59:27

3 entirely sure, because I don't actually remember the 12:59:29

4 law on whether United States companies can offer 12:59:32

5 shares through 144(a) offering by doing it through a 12:59:35

6 foreign subsidiary, for example. So I can't answer 12:59:38

7 with all sureness yes or no. 12:59:45

8 MR. COLLINS: Excuse me. We need to 12:59:48

9 break when it is convenient. 12:59:49

10 MR. BESSETTE: Okay. 12:59:51

11 BY MR. BESSETTE: 12:59:57

12 Q. Have you ever counseled companies in 12:59:58

13 any of their -- in disclosure documents? In other 13:00:02

14 words, what companies need to put in various 13:00:05

15 disclosure documents? Do you have that background? 13:00:08

16 A. In connection with that same 13:00:11

17 transaction, I was not the person in contact with 13:00:13

18 clients, but I was reviewing company documents and 13:00:17

19 trying to make some effort of determining what was 13:00:22

20 and was not relevant and material to investors. 13:00:27

21 Q. And this was as a second year law 13:00:30

22 student? 13:00:33

23 A. No. This -- all right. I should have 13:00:33

24 let you finish. 13:00:33

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1 No, this was a -- yes, the 13:00:37
 2 summer after my second year of law school. 13:00:40
 3 Q Right. Okay. So other than that 13:00:42
 4 experience as a summer associate, intern, whatever 13:00:45
 5 you want to call it, do you have any other 13:00:49
 6 experience counseling companies as to the disclosure 13:00:52
 7 requirements of the Securities & Exchange 13:00:56
 8 Commission? 13:01:00
 9 A I am just trying to recollect the body 13:01:00
 10 of work that I did when I was working for Chance, 13:01:06
 11 because I did other securities work. And I just am 13:01:09
 12 hesitant to say absolutely not, but to the best of 13:01:15
 13 my recollection, no. 13:01:19
 14 MR BESSETTE: I think this is a fine 13:01:33
 15 place to stop 13:01:34
 16 (Break taken.) 13:40:50
 17 BY MR. BESSETTE: 13:40:50
 18 Q How many clubs were sold pre IPO at 13:40:51
 19 Costco, do you know? 13:40:55
 20 MR COLLINS: Vague and ambiguous 13:40:57
 21 BY THE WITNESS: 13:40:57
 22 A The numbers are difficult to actually 13:41:01
 23 determine. But I reviewed the Costco figures, and I 13:41:06
 24 believe the amount is 3,917. I have the exact 13:41:08

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1 number in my report 13:41:19
 2 BY MR. BESSETTE: 13:41:19
 3 Q I think it's 3,860, but give or take. 13:41:19
 4 Somewhere in the 3,900 range. 13:41:19
 5 Do you know the breakdown of that 13:41:21
 6 number between U.S. and Canada? 13:41:22
 7 A I believe it was something like 13:41:24
 8 82 percent of those clubs were sold in the United 13:41:26
 9 States, and the remainder was in Canada. 83, 82 13:41:29
 10 something like that. 13:41:34
 11 Q So 3,200 or so in the U.S. and 600 in 13:41:34
 12 Canada is I think the breakdown. 13:41:38
 13 A I am not comfortable with the numbers, 13:41:41
 14 because I am not doing the math right now, but yeah, 13:41:44
 15 something like that. 13:41:48
 16 Q And I think you said in your report 13:41:48
 17 that that's a relatively small number compared with 13:41:50
 18 Adams total pre IPO 1998 sales? 13:41:55
 19 A Yes. 13:41:57
 20 Q And do you know what the number of 13:41:58
 21 Adams pre 1998 -- I am sorry -- 1998 pre IPO sales 13:42:00
 22 were in terms of units? 13:42:07
 23 A I believe it was somewhere under 13:42:08
 24 500,000. 13:42:11

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1 Q Now, is it your -- let me ask this: 13:42:12
 2 That number, that relatively small number as you 13:42:31
 3 admit in your report, by itself, that number of 13:42:38
 4 clubs being sold at Costco, was that material in 13:42:41
 5 your mind as an expert witness in gray marketing? 13:42:45
 6 MR. COLLINS: Vague and ambiguous. 13:42:48
 7 BY THE WITNESS: 13:42:50
 8 A The number standing alone may or may 13:42:51
 9 not be material. 13:42:53
 10 BY MR. BESSETTE: 13:42:54
 11 Q I understand your opinion is that when 13:42:55
 12 viewed -- that number, when viewed with the 13:42:59
 13 company's business model as we've talked about this 13:43:05
 14 morning, in your mind, made the risk of gray 13:43:07
 15 marketing material at the time of the IPO? 13:43:12
 16 A That also in combination with the 13:43:14
 17 trend of the gray marketing sales that was occurring 13:43:17
 18 at the time, yes. 13:43:21
 19 Q And let me ask you, do you -- just to 13:43:21
 20 be sure. You have not, as a professional, as an 13:43:37
 21 attorney, advised a client as to what was material 13:43:42
 22 or what was not material which would go in an 13:43:49
 23 offering document, is that -- do I understand that 13:43:53
 24 correctly or at least you can't remember doing that? 13:43:55

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1 MR. COLLINS: I think it is asked and 13:43:58
 2 answered. 13:44:00
 3 BY THE WITNESS: 13:44:00
 4 A Yeah. I have reviewed company 13:44:00
 5 documents trying to look for and flag issues that 13:44:04
 6 might be material that I would pull out, but only on 13:44:08
 7 occasion and -- yeah. 13:44:16
 8 BY MR. BESSETTE: 13:44:20
 9 Q And you have no experience as a deal 13:44:20
 10 attorney, actually, any experience as a deal 13:44:24
 11 attorney as opposed to a summer associate making 13:44:27
 12 calls of materiality in documents to be filed with 13:44:30
 13 the SEC and advising clients of that? 13:44:34
 14 A Yeah. I actually would like to go 13:44:37
 15 back to my answer to that question previously, 13:44:38
 16 because in thinking about it, I remember a dismal 13:44:40
 17 day that I think might rather be forgotten that I 13:44:46
 18 spent in Buffalo, New York, in a dark conference 13:44:51
 19 room sifting through documents for materials -- for 13:44:53
 20 documents I thought might be material to investors, 13:44:56
 21 but I can't remember anything else about the deal. 13:44:58
 22 Q Okay. And I am drawing a distinction, 13:45:00
 23 I am not talking about reviewing documents that you 13:45:03
 24 personally thought were material. I am talking 13:45:05

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<p>1 about advising a client as a lawyer what is and what 13:45:08 2 is not material in your opinion that is what should 13:45:12 3 or should not go in an offering document that will 13:45:14 4 be filed with the SEC. You don't have any 13:45:17 5 experience doing that? 13:45:21 6 A. That's correct. 13:45:22 7 Q And your -- the basis of you drawing 13:45:22 8 opinions about materiality of the gray market in 13:45:32 9 this case, I think as we have established, is your 13:45:35 10 teaching the classes for the last three years and 13:45:38 11 reviewing the articles that you have cited and that 13:45:40 12 in additional ones that you used in comparing your 13:45:45 13 class, is that right? 13:45:48 14 MR. COLLINS: Asked and answered. 13:45:48 15 Go ahead 13:45:49 16 BY THE WITNESS: 13:45:50 17 A Yes. My hesitation is because there 13:45:53 18 was obviously also information that I read in 13:45:58 19 preparation for this -- in connection with this 13:45:59 20 litigation. 13:46:03 21 BY MR. BESSETTE: 13:46:04 22 Q Sure. All right. Fair enough 13:46:05 23 When did Adams Golf learn -- 13:46:19 24 13:46:19</p>	<p>1 A. I believe it could have been higher. 13:51:08 2 Q. I guess it could have been lower, too, 13:51:10 3 but I mean, what's that based on? 13:51:13 4 A. I'm not sure that it could have been 13:51:15 5 lower. These eight documents are undeniably in 13:51:17 6 existence. The company was organized in a way that 13:51:22 7 had I believe they were called regional account 13:51:25 8 coordinators going out into the field to talk with 13:51:26 9 all of the company's authorized retailers and 13:51:29 10 distributors. And I would imagine that an awful lot 13:51:32 11 of complaints came to the company through 13:51:35 12 conversations between retailers and distributors and 13:51:38 13 those regional account coordinators in a way that 13:51:41 14 may not ever have been documented through formal 13:51:42 15 communication 13:51:45 16 Q. Okay. Do you factor into your 13:51:46 17 opinions or conclusions in this case any assumptions 13:52:01 18 that there were a higher number of complaints than 13:52:04 19 that indicated here? 13:52:06 20 A. I didn't rely on it because it is 13:52:08 21 somewhat speculative. 13:52:12 22 Q. Somewhat or completely? 13:52:13 23 A. It is speculative. 13:52:15 24 Q. So you haven't taken that into 13:52:16</p>
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<p>1 (Off the record 13:46:19 2 discussion.) 13:46:19 3 BY MR. BESSETTE: 13:46:19 4 Q Professor, do you know how many Adams 13:50:06 5 Golf distributors or retailers complained to it pre 13:50:10 6 IPO about gray marketing? 13:50:14 7 A. I think that's impossible to know. 13:50:16 8 Q You have seen references in many of 13:50:19 9 your readings in this case? 13:50:21 10 A I have seen some references, yes. 13:50:22 11 Q Why don't you look at Professor 13:50:24 12 Frazier's report, Paragraph 40, where he writes 13:50:27 13 there were a total of eight out of some 7,000 13:50:44 14 retailers complained, and he cites the Grace report. 13:50:48 15 Do you see that? 13:50:51 16 A. Uh-huh. 13:50:51 17 Q And you have read the Grace report? 13:50:51 18 A. I have. 13:50:53 19 Q Okay. Do you have any knowledge that 13:50:54 20 the number of complaints was higher or lower than 13:50:56 21 this? 13:50:59 22 A. Concrete knowledge, no. 13:50:59 23 Q So I take it from your answer you have 13:51:06 24 a view that it was higher? 13:51:07</p>	<p>1 account? 13:52:18 2 A. No. 13:52:19 3 Q. All right. So the number of 13:52:19 4 complaints that we have documentary evidence of is 13:52:20 5 the give or take eight out of 7,000 retailers or 13:52:24 6 distributors complaining. Is that a high number in 13:52:31 7 your view? 13:52:34 8 MR. COLLINS: Vague and ambiguous. 13:52:34 9 BY THE WITNESS: 13:52:37 10 A. Again, as a number of issues in this 13:52:37 11 case, it was not the number so much that was 13:52:40 12 concerning to me, as the content of those 13:52:42 13 complaints. 13:52:42 14 BY MR. BESSETTE: 13:52:43 15 Q Okay. Does the number of -- let me 13:52:43 16 ask you this. Is that a low number of complaints -- 13:52:44 17 well, strike that 13:52:44 18 Actually, going back to 40 where 13:52:48 19 Professor Frazier says in the second sentence that, 13:52:51 20 "This is an incredibly low number of complaints and 13:52:56 21 in no way indicates the existence of degraded 13:53:01 22 relationships with Adams Golf's authorized retail 13:53:01 23 network," do you disagree with that statement? 13:53:12 24 A. I don't disagree with the first part. 13:53:13</p>

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1 A. It would be speculative to answer that 14:08:59
 2 question. 14:09:02
 3 Q. Did you read the deposition of Darl 14:09:02
 4 Hatfield, the former CFO? 14:09:17
 5 A. I don't remember. If I did, it was 14:09:19
 6 probably touching on parts of it and not focusing on 14:09:21
 7 all of it 14:09:26
 8 Q. Okay. Did you read the part where he 14:09:27
 9 stated that he didn't think gray market sales had 14:09:30
 10 any financial impact at all on Adams Golf? 14:09:34
 11 A. I don't recall. 14:09:38
 12 Q. Let me give you the -- hand you -- 14:09:38
 13 well, I'm sorry. Let's mark this. 14:10:04
 14 (Exhibit No. 307 was 14:10:13
 15 marked for 14:10:13
 16 identification.) 14:10:14
 17 BY MR. BESSETTE: 14:10:14
 18 Q. Okay Professor, you have now been 14:10:14
 19 handed a document marked Exhibit 307 by the court 14:10:17
 20 reporter. I think it is the Eagle study that you 14:10:20
 21 cite in your report at Paragraph 21B, I think also 14:10:23
 22 Paragraph 7 of your rebuttal. 14:10:34
 23 MR. COLLINS: For the record, it is 14:10:36
 24 OCH 71 through 88. 14:10:38

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1 BY THE WITNESS: 14:10:38
 2 A. What paragraph of the rebuttal, I am 14:10:45
 3 sorry? 14:10:45
 4 BY MR. BESSETTE: 14:10:45
 5 Q. Now, on Paragraph 7 -- 14:10:52
 6 A. Of the rebuttal, right? 14:10:54
 7 Q. Uh-huh. Yes, ma'am. 14:10:57
 8 Although the part -- it might be 14:10:57
 9 your initial report. Let me just look. Yeah, it's 14:11:29
 10 actually -- the quote is in Paragraph 21B of your 14:11:29
 11 initial report. He is saying, "In a recent study of 14:11:32
 12 the effects of gray marketing on brand image, each 14:11:43
 13 of 15 brand owners believe that parallel import 14:11:46
 14 activity of their products into discount retail 14:11:49
 15 stores was negatively impacting or had the potential 14:11:52
 16 to impact on their brands perceptions." And I think 14:11:59
 17 you cite the Eagle report on page 1342? 14:11:59
 18 A. Correct. 14:12:05
 19 Q. Okay. If you turn to page 1335 of 14:12:05
 20 that article, and it's obviously going to be one of 14:12:09
 21 the underlined lines, because I've underlined that, 14:12:09
 22 but I don't remember which one. I believe the 14:12:19
 23 article cites a source stating that parallel export 14:12:20
 24 channels may assist in penetrating foreign markets 14:12:20

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1 for an increasing foreign market share." 14:12:28
 2 A. Yes. 14:12:28
 3 Q. Okay. What is the cite cited for that 14:12:29
 4 statement, by the way? 14:12:38
 5 A. It says Mitchell, 1998. 14:12:38
 6 Q. Are you familiar with that article? 14:12:40
 7 A. I don't believe I looked it up, no. 14:12:41
 8 Q. This Eagle article, too, by the way, 14:12:43
 9 is published what, some five years after Adam's IPO? 14:12:46
 10 A. Yes. 2003 I believe. 14:12:49
 11 Q. I believe, yeah. 14:12:50
 12 We have touched on this before, 14:13:00
 13 but at Paragraph 19 of your initial report, and I 14:13:01
 14 will just read it, you can look if you need to. You 14:13:05
 15 say, "In the long-term, the gray market is known to 14:13:07
 16 be potentially detrimental to consumers and 14:13:10
 17 trademark holders alike." Doesn't the Eagle article 14:13:15
 18 at page 1335 state that "Protecting parallel 14:13:19
 19 importers is perceived as acting in the interest of 14:13:25
 20 consumers"? 14:13:30
 21 A. What it does for consumers is 14:13:30
 22 different from what it does to a company. 14:13:34
 23 Q. My question was, doesn't that article 14:13:36
 24 state that? 14:13:40

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1 MR. COLLINS: Document speaks for 14:13:40
 2 itself. 14:13:42
 3 BY THE WITNESS: 14:13:42
 4 A. It says that it can be -- hang on. 14:13:42
 5 What it says is that protecting parallel importers 14:13:50
 6 is perceived as providing a check on the near 14:13:53
 7 monopoly held by many manufacturers and as acting in 14:13:53
 8 the interest of consumers 14:14:05
 9 BY MR. BESSETTE: 14:14:05
 10 Q. Okay. And at page 1339, doesn't Eagle 14:14:06
 11 state that there is little research of an empirical 14:14:09
 12 nature concerning parallel importing or its effect, 14:14:13
 13 positive or negative, on brand equity and values? 14:14:17
 14 MR. COLLINS: Speaks for itself 14:14:20
 15 Go ahead. 14:14:22
 16 BY THE WITNESS: 14:14:22
 17 A. It does say that was the reason for 14:14:22
 18 this study. 14:14:24
 19 BY MR. BESSETTE: 14:14:25
 20 Q. And there is a marked steer toward 14:14:26
 21 conjecture and opinion rather than providing 14:14:26
 22 objective, quantitative analysis of the impacts of 14:14:26
 23 the practice on brands, markets and individual 14:14:32
 24 market segments? 14:14:34

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1 MR. COLLINS: Same objection. 14:14:35
 2 BY THE WITNESS: 14:14:37
 3 A. It does say that, that was the gap she 14:14:38
 4 was aiming to fill. 14:14:40
 5 BY MR. BESSETTE: 14:14:44
 6 Q. And didn't Eagle tell the reader in 14:14:44
 7 the study that parallel importing activities 14:14:44
 8 explored only in the consumer goods sector of the 14:14:44
 9 New Zealand economy? 14:14:49
 10 MR. COLLINS: Speaks for itself 14:14:49
 11 Where are you referring to, please? For the record, 14:14:51
 12 it's OCH 78. 14:14:51
 13 BY THE WITNESS: 14:14:51
 14 A. Yes. She is informing the reader of 14:14:57
 15 the place in which she did her study 14:14:59
 16 BY MR. BESSETTE: 14:15:01
 17 Q. How similar is New Zealand's gray 14:15:01
 18 market economy to Canada's, if you know? 14:15:06
 19 A. I don't know 14:15:08
 20 Q. Do you know whether any of the 14:15:08
 21 interviewees of that study sell golf clubs? 14:15:10
 22 A. I don't know 14:15:14
 23 Q. 28 C 2 of your report. I think you 14:15:14
 24 quote -- 14:15:38

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1 A. Hang on a second.
 2 Q. Sure.
 3 A. That's page 19, right?
 4 Q. Yes Uh-huh
 5 A. Okay
 6 Q. You cite where Eagle writes that many 14:15:49
 7 trademark holders have noted substantial losses in 14:15:55
 8 sales, and you say up to 30 percent as the direct 14:15:58
 9 result of parallel import activity 14:16:01
 10 A. I don't say up to 30 percent. That's 14:16:04
 11 part of the quote. 14:16:06
 12 Q. Right. Doesn't the very next sentence 14:16:08
 13 state that others generally where there was a high 14:16:10
 14 element of rapidly changing technology or fashion 14:16:10
 15 reported minimal impact? 14:16:16
 16 MR. COLLINS: Just so we have a clear 14:16:16
 17 record here, what page of Eagle are you referring to 14:16:19
 18 now? 14:16:23
 19 BY MR. BESSETTE: 14:16:23
 20 Q. It's 1342 that was cited in your 14:16:24
 21 report. 14:16:27
 22 MR. COLLINS: That's fine. I just 14:16:27
 23 want the record to be clear as to what you are 14:16:28
 24 reading. 14:16:30

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1 MR. BESSETTE: Okay. 14:16:30
 2 BY THE WITNESS: 14:16:30
 3 A. I would just like to read it, just for 14:16:31
 4 a second. 14:16:32
 5 BY MR. BESSETTE: 14:16:32
 6 Q. Uh-huh. 14:16:32
 7 A. Yes. That is the next phrase found in 14:17:04
 8 the Eagle article. 14:17:06
 9 Q. Wasn't Adam's growth strategy 14:17:08
 10 including -- include the developing of new 14:17:12
 11 technology in product design? 14:17:14
 12 A. Yes, but I don't know how fast. 14:17:16
 13 Q. Did Adam's Tight Lies club win an 14:17:18
 14 award for technical reasons in 1998? 14:17:23
 15 A. I don't know 14:17:26
 16 Q. You can turn, Professor, to your 14:17:27
 17 initial report at 28 C 2. I guess, actually, right 14:17:56
 18 probably where you are. 14:18:04
 19 MR. COLLINS: Page 19? 14:18:04
 20 BY THE WITNESS: 14:18:04
 21 A. Yes, that's where I am. 14:18:06
 22 BY MR. BESSETTE: 14:18:08
 23 Q. Let me hand you what has been marked 14:18:14
 24 previously as Exhibit 80, which you reference in 14:18:17

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1 Paragraph 28 C 2 of your expert report, Exhibit 303 14:18:21
 2 Now, Paragraph 2 of your report 14:18:37
 3 you say, "In addition, the sales in Costco stores 14:18:39
 4 had the effect of diminishing the prestige and 14:18:42
 5 desirability of its clubs among high end consumers, 14:18:47
 6 thus reducing sales though." I think you mean 14:18:47
 7 through. 14:18:47
 8 A. It should have been through. 14:18:47
 9 Q. Okay. "The high end retailers. On 14:18:55
 10 October 8, 1998, Barney Adams recognized this 14:18:57
 11 problem when he estimated that the gray market had a 14:19:01
 12 negative sales effect in Q4 of 20 to 25 percent 14:19:05
 13 based on a market survey (customers who refused to 14:19:05
 14 buy)." 14:19:05
 15 Now, to be clear Mr. Adams isn't 14:19:12
 16 estimating that gray market had a negative sales 14:19:17
 17 effect in Q4 in October, is he? 14:19:23
 18 MR. COLLINS: The document speaks for 14:19:27
 19 itself. 14:19:28
 20 BY MR. BESSETTE: 14:19:29
 21 Q. Now, what is your understanding of 14:19:30
 22 what he is doing? 14:19:31
 23 MR. COLLINS: Calls for speculation. 14:19:32
 24

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1 Costco? 14:56:47

2 A. Yes. And again, I will point to that 14:56:47

3 same memo, which I don't think I've seen yet today. 14:56:50

4 And this is how. The company was in a very good 14:56:53

5 position to assess the causes of its own gray market 14:56:58

6 problem once it started to occur. And when it tried 14:57:02

7 to do that, one of the first places that it looked 14:57:04

8 was its pricing policy. I believe the company's own 14:57:07

9 assessment of what was causing its own gray market 14:57:10

10 problem speaks for itself. 14:57:13

11 Q. So, okay. And in that document, did 14:57:16

12 the company indicate just what you have said, that 14:57:17

13 it looked at the cause and it was trying to deal 14:57:21

14 with the cause of gray marketing and one of the 14:57:24

15 causes was its retail pricing? 14:57:27

16 MR. COLLINS: Vague and ambiguous. 14:57:29

17 BY MR. BESSETTE: 14:57:29

18 Q. Is that your recollection? 14:57:29

19 MR. COLLINS: Vague and ambiguous, 14:57:31

20 speaks for itself. 14:57:31

21 Go ahead 14:57:32

22 BY THE WITNESS: 14:57:32

23 A. My recollection of that document was 14:57:33

24 not that it spoke about the causes. What it spoke 14:57:36

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1 about was the proactive steps the company was using 14:57:40

2 in order to try to stem gray marketing in the 14:57:44

3 future. One would assume or hope, at least, that 14:57:47

4 Adams was putting its best foot forward in that 14:57:50

5 respect, and in devising strategies to try to 14:57:55

6 minimize gray marketing in the future, it was trying 14:58:01

7 to get to the causes of its gray market activity. 14:58:01

8 BY MR. BESSETTE: 14:58:04

9 Q. But you are just assuming that, are 14:58:04

10 you not? 14:58:06

11 MR. COLLINS: Asked and answered. 14:58:07

12 BY THE WITNESS: 14:58:08

13 A. Again, like I said, I don't know the 14:58:08

14 company's internal process, but I do assume that if 14:58:12

15 the company is taking the time to devise a new 14:58:15

16 pricing policy which is going to adversely effect 14:58:18

17 the company as well, that it wouldn't do so -- it 14:58:22

18 wouldn't do so without cause. So it would do so in 14:58:29

19 honest and earnest attempts to actually be trying to 14:58:33

20 stem its gray market problem, trying to get at a 14:58:36

21 real cause of its gray market problem. 14:58:39

22 BY MR. BESSETTE: 14:58:40

23 Q. Wasn't it just as likely that it was 14:58:40

24 just trying to fix the problem and that was one way 14:58:43

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1 it thought it could at least alleviate the harm to 14:58:44

2 its retailers? 14:58:48

3 A. In fact, I think that's exactly what 14:58:48

4 I'm trying to say. It is trying to fix the problem. 14:58:48

5 The way you fix the problem is by spotting its 14:58:50

6 causes and trying to alleviate the causes. And I 14:58:54

7 think that's what the company was trying to do. 14:58:57

8 Q. So you draw from that memo that one of 14:58:57

9 the causes of the gray marketing was a high retail 14:59:00

10 margin? 14:59:03

11 A. Yes. 14:59:03

12 Q. And is there -- 14:59:05

13 MR. COLLINS: Excuse me. Are you 14:59:05

14 finished? 14:59:05

15 THE WITNESS: I didn't finish. 14:59:05

16 BY THE WITNESS: 14:59:05

17 A. From that memo, together with other 14:59:08

18 documents 14:59:10

19 BY MR. BESSETTE: 14:59:10

20 Q. Okay. What are the other documents? 14:59:11

21 A. Okay. For example, if I had seen that 14:59:12

22 memo and that was the company's strategy, and I knew 14:59:14

23 the company had, just to give a hypothetical, a 14:59:17

24 05 percent retailer profit margin and it was 14:59:21

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1 significantly lower than all of its competitors, 14:59:25

2 then I would think it was an odd strategy. 14:59:28

3 Q. Well, my question was, what other 14:59:30

4 documents beside the pricing policy memo leads you 14:59:33

5 to the conclusion that retail pricing and retail 14:59:36

6 margin was a cause of gray marketing for Adams Golf? 14:59:41

7 MR. COLLINS: Asked and answered. 14:59:45

8 We've had a lot of answers along that line. 14:59:50

9 Go ahead. 14:59:50

10 MR. BESSETTE: I haven't heard any 14:59:50

11 other documents. I apologize if you've said them. 14:59:50

12 BY MR. BESSETTE: 14:59:50

13 Q. Besides that memo, what other 14:59:51

14 documents? 14:59:53

15 A. What other documents do I believe -- I 14:59:53

16 am sorry. 14:59:58

17 Q. You said that that document, along 14:59:58

18 with others, leads you to the conclusion that the 15:00:00

19 retail margin caused the gray marketing in Adams 15:00:04

20 Golf at least in part. What other documents? 15:00:09

21 A. Okay, okay. So in addition to that 15:00:11

22 document, there is the road trip document, which we 15:00:12

23 were just talking about, which outlines very clearly 15:00:15

24 Adams' high retail -- the retail profit margin that 15:00:17

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1 Adams presented to its retailers. And in addition, 15:00:21
 2 there is an awful lot in the academic literature as 15:00:25
 3 well about profit margins being an invitation to 15:00:25
 4 gray marketers 15:00:32
 5 Q. Okay. I understand the academic 15:00:32
 6 literature. I see the chart and the road show 15:00:37
 7 documents showing the retail margin. And then you 15:00:38
 8 have got the document you are talking about where 15:00:39
 9 the company provided a new policy for Canada, for 15:00:41
 10 certain retailers in Canada that were effected where 15:00:46
 11 they got a credit, okay. 15:00:49
 12 Any other documents that you are 15:00:51
 13 referring to that, in your mind, lead to the 15:00:52
 14 conclusion that the pricing margin or the retail 15:00:55
 15 margin caused some of the gray marketing? 15:00:58
 16 A. At the moment, no. At the moment, I 15:01:01
 17 don't recall is what I meant to say. 15:01:09
 18 Q. I believe you said somewhere, probably 15:01:11
 19 in your rebuttal report, yeah, I think you said that 15:01:19
 20 that information about retail margins was omitted 15:01:24
 21 from the prospectus? 15:01:27
 22 A. Yes. 15:01:29
 23 Q. Is it your -- do you have any basis to 15:01:29
 24 conclude that it should have been in the prospectus? 15:01:33

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1 A. Yes. 15:01:36
 2 Q. Really? What is your basis? 15:01:36
 3 A. I think in order to understand the 15:01:39
 4 risks that Adams was facing with respect to the gray 15:01:44
 5 market, there was a lot of missing information. 15:01:47
 6 There was the information about the gray market 15:01:50
 7 problem that was presenting itself at Adams, and 15:01:52
 8 there was also, although in the prospectus the 15:01:56
 9 company did state that it wanted to maintain -- I'm 15:01:59
 10 not actually sure if it said it wanted to maintain 15:02:03
 11 profit margins, or whether it said that it couldn't 15:02:03
 12 guarantee the profit margins would be maintained. 15:02:08
 13 But in order to understand that statement fully, one 15:02:10
 14 would have to know -- one would have to know of the 15:02:14
 15 potential threats to that profit margin that existed 15:02:18
 16 for the company at the time. 15:02:22
 17 Q. What is that based on, Professor? 15:02:24
 18 What is your conclusion that that information was 15:02:28
 19 required to be put in the prospectus? 15:02:32
 20 A. Again, absent any disclosure about the 15:02:37
 21 company's gray market problem. Information about -- 15:02:42
 22 the information that was contained in the prospectus 15:02:47
 23 about the company's profit margins or the retailer 15:02:50
 24 profit margins that it offered, were very difficult 15:02:53

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1 to understand, and certainly very difficult to 15:02:56
 2 understand fully, especially if one is trying to see 15:03:00
 3 if there is any threats to that profit margin 15:03:03
 4 Q. So you are saying besides saying that 15:03:06
 5 the company is going to try to maintain profit 15:03:09
 6 margins, but it very well may not, and there is a 15:03:11
 7 risk that those margins will decline, something more 15:03:15
 8 needed to be disclosed? 15:03:20
 9 A. Absolutely. 15:03:21
 10 Q. You are not saying based on some legal 15:03:23
 11 requirement or some knowledge you have with respect 15:03:25
 12 to SEC disclosure, right? This is based on your 15:03:27
 13 gray marketing expertise? 15:03:30
 14 A. Yes, yes. 15:03:32
 15 Q. Okay. 21D of your report. At the 15:03:32
 16 bottom of that page, you say, "The close correlation 15:04:28
 17 between increasing gray market sales and decreasing 15:04:34
 18 authorized sales, therefore, strongly suggests that 15:04:37
 19 the damage to Adams' name of the Tight Lies brand 15:04:40
 20 resulting from the gray market was great immediately 15:04:43
 21 after the company's IPO," or initial public 15:04:46
 22 offering. What do you mean in that sentence by 15:04:49
 23 correlation? 15:04:53
 24 A. Let me read the paragraph. 15:04:53

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1 There was a negative correlation. 15:05:52
 2 The sales were decreasing. Gray market sales were 15:05:54
 3 increasing. 15:05:58
 4 Q. So what do you mean by correlation? 15:05:58
 5 How do you use the word "correlation" in that 15:06:00
 6 sentence? 15:06:03
 7 A. There was a relationship between the 15:06:04
 8 two. 15:06:05
 9 Q. Do you understand the difference 15:06:05
 10 between a correlation and causation? 15:06:07
 11 A. Yes. 15:06:09
 12 Q. Can you explain that to me? 15:06:09
 13 A. Well, for those who use this language, 15:06:11
 14 it seems pretty -- so causation is -- there is you 15:06:16
 15 have got a factor occurring and it is the cause of 15:06:20
 16 another factor that is occurring. That is a causal 15:06:23
 17 relationship. A correlation is two things happening 15:06:28
 18 at the same time. 15:06:31
 19 Q. Okay. Because they are correlated, 15:06:32
 20 they could be unrelated. I mean, they are not 15:06:38
 21 causative? 15:06:41
 22 A. It's possible that they are unrelated. 15:06:42
 23 Q. All right. Could be causative, could 15:06:42
 24 not? 15:06:42

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1 A. Sorry. Let me rephrase that. 15:06:47
 2 MR. COLLINS: And before you do, I 15:06:47
 3 object to causation as outside the scope. 15:06:47
 4 Go ahead 15:06:49
 5 BY THE WITNESS: 15:06:49
 6 A. Yeah. It is possible that they are -- 15:06:50
 7 it is possible that one is not the cause for the 15:06:53
 8 other. 15:06:55
 9 BY MR. BESSETTE: 15:06:56
 10 Q. Okay. And what is the basis for your 15:06:57
 11 assumption or observation, whichever it is, of 15:06:58
 12 decreasing authorized sales? 15:07:02
 13 A. The -- you said what is the basis for 15:07:07
 14 my assumption about decreasing authorized sales? 15:07:13
 15 Q. Yes. 15:07:17
 16 A. The company's sales figures, quarterly 15:07:18
 17 sales figures. 15:07:24
 18 Q. So which sales figures are you talking 15:07:25
 19 about, which quarters? 15:07:28
 20 A. The second, third and fourth. 15:07:29
 21 Q. So when were sales decreasing? 15:07:31
 22 A. Sales started to decrease in the third 15:07:35
 23 quarter and continued in the fourth 15:07:38
 24 Q. So were there decreasing authorized 15:07:41

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1 sales prior to the IPO? 15:07:43
 2 A. I don't believe so, no. It's hard to 15:07:45
 3 say actually, because the IPO happened in the middle 15:07:50
 4 of the third quarter -- or during the third quarter. 15:07:54
 5 So it is actually hard to really separate that out 15:07:56
 6 cleanly. 15:07:58
 7 Q. Well, then why don't we do it as of 15:07:58
 8 the end of June. Were there decreased authorized 15:08:00
 9 sales in Q2? 15:08:03
 10 MR. COLLINS: I think asked and 15:08:05
 11 answered, but go ahead 15:08:07
 12 BY THE WITNESS: 15:08:08
 13 A. No. 15:08:08
 14 BY MR. BESSETTE: 15:08:10
 15 Q. Are you saying here, just to be clear, 15:08:19
 16 I guess that -- well, strike that. 15:08:21
 17 You are not saying in this 15:08:26
 18 paragraph, are you, Professor, that increasing gray 15:08:28
 19 market sales prior to the IPO was causing decreased 15:08:31
 20 authorized sales prior to or shortly after the IPO? 15:08:35
 21 A. No. I am not opining as to causation. 15:08:39
 22 Q. When we were talking about that 15:08:45
 23 pricing policy change, in fact, I -- well, strike 15:08:59
 24 that. 15:08:59

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1 Let me strike my reference to an 15:09:04
 2 earlier document, but Paragraph 14 of your rebuttal, 15:09:06
 3 you say that a Web Street Golf report -- I think 15:09:13
 4 it's supposed to be Wall Street. Sorry. 15:09:24
 5 A. It is supposed to be Web Street. 15:09:24
 6 Q. Is it Web Street? Oh, it says Web 15:09:27
 7 Street. 15:09:27
 8 A. Yeah. 15:09:27
 9 Q. Is it different than the Wall Street 15:09:28
 10 one in the paragraph above? 15:09:30
 11 A. That should say Web Street. 15:09:31
 12 Q. Oh, oh. I see. All right. 15:09:34
 13 So the report dated March 22, 1999 15:09:34
 14 reports that Adams had adopted a new retail pricing 15:09:38
 15 structure in order to combat the gray market sale of 15:09:42
 16 its clubs. Do you know, as you sit here, know for a 15:09:47
 17 fact what factors influenced Adams Golf's decision 15:09:47
 18 to change its pricing policy at that time? 15:09:50
 19 A. I couldn't tell you that I know all of 15:09:50
 20 the factors with complete assurance. 15:09:57
 21 Q. Do you know any of them? 15:10:00
 22 A. Yes. 15:10:03
 23 Q. Which ones? 15:10:04
 24 A. The gray market 15:10:05

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1 Q. And how do you know that? 15:10:09
 2 A. I know it from a couple of different 15:10:10
 3 sources. One would be the Web Street golfers 15:10:15
 4 report, which I cite, which I believe also contained 15:10:18
 5 pieces of interviews with Barney Adams. And then in 15:10:24
 6 addition, there was the pricing strategies the 15:10:29
 7 company was undertaking, the internal company 15:10:33
 8 documents in which the company talks about pricing 15:10:38
 9 strategies I believe also refer to the gray market 15:10:41
 10 Q. Is it your testimony that Barney Adams 15:10:44
 11 testified that the new retail pricing structure had 15:10:47
 12 something to do with gray marketing? 15:10:51
 13 A. No. 15:10:53
 14 Q. Then I misunderstood. You mentioned 15:10:53
 15 Mr. Adams' testimony. What you did mean? 15:10:58
 16 A. I didn't. I said I believe that Web 15:11:00
 17 Street Golf report also included interviews with 15:11:04
 18 Barney Adams. 15:11:06
 19 Q. Okay. And what about those interviews 15:11:08
 20 support your conclusion that the pricing structure 15:11:10
 21 change had anything to do with gray market? 15:11:14
 22 A. The Web Street Golf report covered a 15:11:16
 23 number of issues. The pricing structure was one of 15:11:19
 24 them. And when the Web Street Golf report said that 15:11:22

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1 anywhere? 15:18:00

2 MR COLLINS: Speak for themselves. 15:18:01

3 BY THE WITNESS: 15:18:03

4 A I don't recall. 15:18:04

5 BY MR. BESSETTE: 15:18:04

6 Q Well, you reviewed it I guess in 15:18:05

7 connection with your work in this case, so is it 15:18:07

8 detailed somewhere in your reports? 15:18:09

9 MR COLLINS: She just said she 15:18:11

10 doesn't know. 15:18:14

11 BY THE WITNESS: 15:18:14

12 A I don't recall. I reviewed a lot of 15:18:15

13 documents. I didn't cite them all. 15:18:17

14 BY MR. BESSETTE: 15:18:19

15 Q Why didn't you cite them all, by the 15:18:19

16 way? 15:18:21

17 A My understanding is that there is some 15:18:21

18 limitation on the page limit of the report. If I 15:18:25

19 were to cite every document that I received, I can't 15:18:31

20 even imagine how long the report would have been. 15:18:34

21 Q What is this understanding of some 15:18:36

22 page limit? 15:18:39

23 A It is my own understanding from 15:18:40

24 talking to people who have worked in litigation 15:18:43

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1 previously about what the standard practice is of 15:18:48

2 expert's reports 15:18:50

3 Q Well, how did you decide which 15:18:51

4 documents to include -- to include in your report 15:18:53

5 detailing which ones they were and which ones you 15:18:58

6 didn't? How did you decide which ones to include? 15:19:01

7 A I read them. I looked for all 15:19:03

8 documents that appeared to in any way touch on gray 15:19:05

9 marketing, specifically on the impact that gray 15:19:10

10 marketing was having on the company. I also looked 15:19:13

11 for documents that revealed information about the 15:19:16

12 company's business strategies and business model and 15:19:18

13 strategies for growth in order to be able to 15:19:22

14 determine whether or not the company was poised to 15:19:25

15 become -- to avail itself of the gray market. 15:19:28

16 Q Well, no, no. I am sorry Maybe I 15:19:34

17 wasn't clear on my question. 15:19:37

18 My question is, you are required 15:19:38

19 to list the documents that you reviewed, whether you 15:19:40

20 relied on them or not. 15:19:45

21 A Uh-huh. 15:19:46

22 Q And maybe I am misunderstanding, but 15:19:47

23 what I am hearing is that you reviewed some 15:19:50

24 documents that you have not set forth in your 15:19:53

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1 report 15:19:55

2 A No, no. 15:19:56

3 Q Okay 15:19:56

4 A No, no, no. I set forth all the 15:19:56

5 documents in my report early on in the report. 15:19:58

6 Q Okay. 15:19:58

7 A There I stated that I have reviewed 15:20:02

8 all the exhibits that I received at that time. I 15:20:03

9 did not cite every one of those exhibits 15:20:05

10 Q So the document is, according to your 15:20:08

11 report, has to be an exhibit in the deposition? 15:20:33

12 A Can you say that again? 15:20:37

13 Q Yeah. On page 4 of your report, this 15:20:39

14 is where you list the documents that you reviewed 15:20:43

15 and/or relied on, okay. And the first bullet is 15:20:45

16 depositions and transcripts and exhibits of all 15:20:54

17 deponents except plaintiffs. Then there are other 15:20:57

18 declarations in the Costco documents, a Callaway 10K 15:21:00

19 and an expert report from Alan Miller. So there are 15:21:04

20 no individual documents listed. 15:21:08

21 So my question is, since you don't 15:21:11

22 have any individual documents listed, and you don't 15:21:12

23 cite it anywhere individually in your report, I 15:21:16

24 suppose it has to be an exhibit to a deposition 15:21:18

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1 transcript, because otherwise you haven't listed all 15:21:20

2 the documents you have reviewed or relied on. 15:21:23

3 A My understanding of the exhibits that 15:21:25

4 I received was that they were all in connection with 15:21:27

5 deposition transcripts. 15:21:30

6 Q And that's what I asked you. 15:21:31

7 MR. COLLINS: That's what she 15:21:33

8 answered. 15:21:36

9 MR. BESSETTE: I don't think I got an 15:21:36

10 answer before just now. 15:21:38

11 MR. COLLINS: Well, I am glad to tell 15:21:40

12 you, if this is helpful, that we gave her all the 15:21:41

13 deposition transcripts. 15:21:43

14 MR. BESSETTE: Okay. I just want 15:21:43

15 to -- 15:21:43

16 MR. COLLINS: And all of the 15:21:44

17 deposition transcript exhibits. And I don't recall 15:21:45

18 any other document -- I don't know of any documents 15:21:47

19 that we provided that aren't listed here. 15:21:48

20 MR. BESSETTE: Okay. 15:21:50

21 BY MR. BESSETTE: 15:21:51

22 Q Now, go to page -- I'm sorry -- 15:22:02

23 Paragraph 27 of your initial report. You say, low 15:22:04

24 sales force morale is another common effect of gray 15:22:19

<p style="text-align: right;">Page 218</p> <p>1 market activity, and then you cite Barney Adams's 15:22:24</p> <p>2 memo of August 14, which is Exhibit 57, where among 15:22:27</p> <p>3 other comments, he states that the staff had very 15:22:32</p> <p>4 low morale, including having no faith in their 15:22:37</p> <p>5 management. Do you have any knowledge whether the 15:22:40</p> <p>6 low morale that Mr. Adams is referring to in that 15:22:42</p> <p>7 memo had anything to do with gray marketing? 15:22:45</p> <p>8 A. I don't. I thought it was interesting 15:22:48</p> <p>9 that this is one of the common effects of gray 15:22:50</p> <p>10 market activity, and it was, itself, present within 15:22:53</p> <p>11 Adams Golf. 15:22:58</p> <p>12 Q. But you are not giving the opinion or 15:22:59</p> <p>13 it is not part of your conclusion that there is a 15:23:02</p> <p>14 cause and effect relationship between gray marketing 15:23:04</p> <p>15 and a low morale? 15:23:08</p> <p>16 A. I am not making the opinion that it 15:23:09</p> <p>17 necessarily caused the low morale 15:23:13</p> <p>18 Q. Is it your opinion that it had 15:23:16</p> <p>19 anything to do with the low morale? 15:23:18</p> <p>20 A. I don't know with certainty, no 15:23:37</p> <p>21 Q. Do you know at all or are you just 15:23:46</p> <p>22 speculating? 15:23:50</p> <p>23 MR. COLLINS: Asked and answered 15:23:50</p> <p>24</p>	<p style="text-align: right;">Page 220</p> <p>1 world, the universe of authorized retailers that 15:25:35</p> <p>2 were displeased with Adams. The entire universe 15:25:40</p> <p>3 Q. Tell me some 15:25:44</p> <p>4 A. Okay. I can tell you that all the 15:25:45</p> <p>5 retailers that sent complaints to Adams, in addition 15:25:46</p> <p>6 to those that were represented by WDC Mackenzie when 15:25:49</p> <p>7 they corresponded with Adams, and related to Adams 15:25:55</p> <p>8 that authorized retailers in Canada were quite 15:25:58</p> <p>9 displeased. 15:26:02</p> <p>10 Q. Okay. So we have Mackenzie as the 15:26:02</p> <p>11 Canadian distributor, we have got six or seven 15:26:05</p> <p>12 retailers that complain. And what else do we have? 15:26:09</p> <p>13 MR. COLLINS: Asked and answered 15:26:12</p> <p>14 By THE WITNESS: 15:26:12</p> <p>15 A. We talked about that earlier in the 15:26:13</p> <p>16 day. As far as written documentation, we have got 15:26:15</p> <p>17 the communications between authorized retailers and 15:26:19</p> <p>18 distributors and the company. And that's what we've 15:26:23</p> <p>19 got. 15:26:25</p> <p>20 BY MR. BESSETTE: 15:26:25</p> <p>21 Q. Okay. 15:26:25</p> <p>22 A. If I can just add to that response. 15:27:24</p> <p>23 Just talking back to that earlier conversation, I 15:27:27</p> <p>24 just want to make sure that it is clear that I am 15:27:28</p>
<p style="text-align: right;">Page 219</p> <p>1 BY THE WITNESS: 15:23:51</p> <p>2 A. There is a certain amount of 15:23:52</p> <p>3 speculation, because I'll tell you the process that 15:23:53</p> <p>4 I went through in seeing them. When I saw some of 15:23:55</p> <p>5 the negative effects that gray market activity can 15:24:00</p> <p>6 have on a company, one of them, which I wasn't sure 15:24:03</p> <p>7 I would find, was low sales force morale. However, 15:24:07</p> <p>8 in then reviewing the documents that I received, I 15:24:11</p> <p>9 saw that, in fact, that was another problem that 15:24:14</p> <p>10 Adams Golf was facing at the time. I thought that 15:24:20</p> <p>11 was interesting. 15:24:26</p> <p>12 Q. Okay. 15:24:26</p> <p>13 A. And worth noting, since that is often 15:24:28</p> <p>14 caused by the gray market. 15:24:31</p> <p>15 Q. Right. Okay. But it's speculation on 15:24:33</p> <p>16 your part whether there is any cause and effect 15:24:35</p> <p>17 relationship? 15:24:38</p> <p>18 A. Yes 15:24:38</p> <p>19 Q. 23A, last sentence. "The displeasure 15:24:38</p> <p>20 Adams' authorized retailers felt with gray market 15:25:13</p> <p>21 sales is well documented and described in part in 15:25:18</p> <p>22 Paragraph 15A above." Which authorized retailers 15:25:22</p> <p>23 were displeased with Adams, Professor? 15:25:26</p> <p>24 A. I wouldn't be able to tell you the 15:25:28</p>	<p style="text-align: right;">Page 221</p> <p>1 referring to also having knowledge of the practice 15:27:32</p> <p>2 of regional account coordinators going into the 15:27:35</p> <p>3 field, having strong relationships with the 15:27:38</p> <p>4 retailers. Especially after the gray market problem 15:27:41</p> <p>5 arose, they were making trips into the fields to 15:27:43</p> <p>6 work with authorized retailers. And so like I said, 15:27:46</p> <p>7 and we talked about the speculative nature of this 15:27:50</p> <p>8 as well, I could imagine that an awful lot of 15:27:53</p> <p>9 unofficial complaints were made sort of in those 15:27:56</p> <p>10 engagements. 15:28:00</p> <p>11 Q. Sure. Do you have any evidence of 15:28:01</p> <p>12 any? 15:28:02</p> <p>13 A. No. 15:28:02</p> <p>14 Q. Okay. At Paragraph 19 and I think 21 15:28:03</p> <p>15 of your report, and I don't know that you need to 15:28:09</p> <p>16 refer to them, but you say, again, one of the other 15:28:14</p> <p>17 things that make Adams Golf particularly vulnerable 15:28:16</p> <p>18 to the gray market -- well, no. Strike that. 15:28:21</p> <p>19 You actually say, citing Myers, 15:28:27</p> <p>20 you say, problems can arise in the form of 15:28:31</p> <p>21 ineffective pricing policies, which you talked 15:28:33</p> <p>22 about, deteriorated distributor relationships, which 15:28:36</p> <p>23 you talked about, low sales force morale, again, 15:28:40</p> <p>24 which you've talked about, and poor customer 15:28:41</p>

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1 have been aware of and therefore disclosed? 17:54:08
 2 MR. COLLINS: Asked and answered. 17:54:10
 3 BY MR. BESSETTE: 17:54:14
 4 Q. Is it just based on assumption that 17:54:15
 5 they were aware of the Lehman estimates? 17:54:18
 6 A. There was that. There is also, as 17:54:21
 7 you've discussed and I've seen in a number of 17:54:22
 8 documents in which Barney Adams is discussing 17:54:24
 9 seasonality, and that there is often a downward turn 17:54:28
 10 during that time of the year. 17:54:31
 11 Q. Okay. So now you are saying that the 17:54:32
 12 seasonality effect in Q3 and Q4 should have put the 17:54:36
 13 company on alert that there is a serious risk that 17:54:40
 14 the gray marketing, even if it stayed at the same 17:54:43
 15 level of activity, would cause -- would cause an 17:54:47
 16 increase in the magnitude of the problem for the 17:54:53
 17 company? 17:54:57
 18 A. Yes 17:54:57
 19 Q. And do you know the percentage of 17:54:57
 20 decline on average that the company experienced in 17:54:59
 21 Q3 or Q4 due to seasonality alone versus Q1 and Q2 17:55:03
 22 in any given year? 17:55:12
 23 MR. COLLINS: Vague. 17:55:14
 24

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1 BY THE WITNESS: 17:55:15
 2 A. On average, no. In any given year, 17:55:16
 3 yes. And I stated those figures in 1998 in my 17:55:17
 4 report. 17:55:20
 5 BY MR. BESSETTE: 17:55:20
 6 Q. You stated the estimates by Lehman. 17:55:20
 7 A. No, I don't believe so. 17:55:23
 8 Q. Okay. Where are those numbers? 17:55:23
 9 A. Further on in 21, I believe 17:55:25
 10 Q. Well, those are the actual numbers in 17:55:34
 11 Q3 and Q4. Are you saying that all of those are due 17:55:36
 12 to seasonality? 17:55:40
 13 A. I don't know which part of that 17:55:41
 14 decline was due to seasonality. 17:55:45
 15 Q. Well, that was my question. My 17:55:48
 16 question was and is, do you know what the percentage 17:55:51
 17 decline in Q3 and Q4 due to seasonality alone in any 17:55:52
 18 given year that Adams Golf suffered? 17:55:56
 19 MR. COLLINS: Asked and answered, way 17:55:59
 20 outside the scope. 17:56:01
 21 BY THE WITNESS: 17:56:01
 22 A. No 17:56:02
 23 BY MR. BESSETTE: 17:56:02
 24 Q. So how can you sit here and say that 17:56:03

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1 Adams Golf should have realized a serious risk due 17:56:05
 2 alone to a downturn in Q3 and Q4 due to seasonality 17:56:09
 3 when you don't know the effect seasonality has in 17:56:10
 4 any given year to Adams Golf? 17:56:14
 5 MR. COLLINS: Asked and answered. 17:56:16
 6 Do you have anything to add to 17:56:17
 7 what you already said? 17:56:18
 8 THE WITNESS: No, I don't. 17:56:18
 9 BY MR. BESSETTE: 17:56:18
 10 Q. Well, can you answer my question, 17:56:21
 11 please? 17:56:22
 12 MR. COLLINS: Asked and answered. 17:56:45
 13 BY THE WITNESS: 17:56:45
 14 A. Can you ask the question again?
 15 MR. BESSETTE: Can you read it back,
 16 please?
 17 (Record read.)
 18 BY THE WITNESS:
 19 A. We talked about this already. The 17:56:48
 20 Lehman report was out there in the world, and Adams 17:56:50
 21 was working closely with Lehman. In addition, Adams 17:56:55
 22 had its own experiences with seasonality and knew 17:56:59
 23 the effect of that. And I have seen statements by 17:57:04
 24 Barney Adams in which he addresses the seasonality 17:57:06

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1 effects, particularly in that time of the year. 17:57:11
 2 BY MR. BESSETTE: 17:57:11
 3 Q. Is it your testimony, Professor, that 17:57:11
 4 this internal Lehman commitment committee memo was 17:57:13
 5 public or otherwise made available to Adams Golf? 17:57:15
 6 A. Let me restate that. 17:57:18
 7 MR. COLLINS: That's also asked and 17:57:20
 8 answered. 17:57:20
 9 Go ahead 17:57:20
 10 BY THE WITNESS: 17:57:20
 11 A. I don't know whether it was available 17:57:22
 12 to Adams Golf 17:57:23
 13 BY MR. BESSETTE: 17:57:24
 14 Q. Well, you said in your testimony out 17:57:25
 15 there I just wanted to know what you meant by out 17:57:27
 16 there 17:57:30
 17 A. It was in existence. 17:57:30
 18 Q. Okay. Did you study the life cycle of 17:57:31
 19 the Tight Lies club when doing your work in this 18:00:02
 20 case? 18:00:05
 21 A. What do you mean by the life cycle? 18:00:05
 22 Q. Are you aware that golf clubs 18:00:06
 23 generally have life cycles? 18:00:10
 24 A. Am I aware now or was I aware then? 18:00:13

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1 Q Well, when you did your report. 18:00:15
 2 A From reading the documents, I was 18:00:17
 3 aware of what the documents say regarding life 18:00:19
 4 cycles. 18:00:24
 5 Q No independent knowledge before you 18:00:25
 6 started your work in this case about life cycles of 18:00:32
 7 various golf clubs or golf products? 18:00:35
 8 A No. 18:00:38
 9 Q Do you know what the lifespan was of 18:00:38
 10 the Tight Lies club? 18:00:58
 11 MR. COLLINS: Vague and ambiguous. 18:01:00
 12 BY THE WITNESS: 18:01:00
 13 A I don't know. 18:01:05
 14 BY MR. BESSETTE: 18:01:06
 15 Q You are aware that the company 18:01:06
 16 produced a newer one, a Tight Lies 2 I think or 18:01:08
 17 whatever they called it, beyond the original, they 18:01:13
 18 made a series of clubs? 18:01:16
 19 A Yes, I am aware that they were -- I 18:01:16
 20 believe there was more than just the two. I believe 18:01:19
 21 there were additional 18:01:21
 22 Q Right. If Adams Golf had continued to 18:01:24
 23 produce only the original Tight Lies, do you have an 18:01:28
 24 opinion here what would have happened to sales of 18:01:32

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1 the original Tight Lies over time? 18:01:35
 2 MR. COLLINS: Outside the scope 18:01:37
 3 BY THE WITNESS: 18:01:38
 4 A No. 18:01:38
 5 BY MR. BESSETTE: 18:01:39
 6 Q Do you have any opinion on what would 18:01:41
 7 have been the impact of gray marketing on the 18:01:43
 8 continued sales of only the original Tight Lies 18:01:48
 9 clubs if that's all the clubs Adams Golf had? 18:01:51
 10 A I would be really in the realm of 18:01:56
 11 speculation to answer that question 18:01:59
 12 MR. BESSETTE: We are good. I am done 18:02:00
 13 for now. Thanks. 18:02:03
 14 EXAMINATION 18:02:03
 15 BY MR. GLUCKOW: 18:02:03
 16 Q Professor Ochoa, Paul Gluckow, I'm 18:02:03
 17 with Simpson Thacher. My firm represents the 18:02:09
 18 underwriter defendants in this matter. 18:02:11
 19 I take it from your report you 18:02:13
 20 have had an opportunity to review Mr. Miller's 18:02:17
 21 report as well? 18:02:20
 22 A Correct 18:02:21
 23 Q And you understand that Mr. Miller is 18:02:21
 24 prepared to offer testimony concerning whether the 18:02:24

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1 due diligence investigation by the underwriters in 18:02:26
 2 connection with the IPO of Adams Golf was reasonable 18:02:30
 3 and adequate? 18:02:34
 4 A Yes. 18:02:35
 5 Q And do you have any intention of 18:02:35
 6 offering any opinion on that question? 18:02:37
 7 A No. 18:02:39
 8 Q Coming back to the drafting process 18:02:39
 9 that you used in preparing both your initial report 18:02:46
 10 and your rebuttal report. From the time that you 18:02:49
 11 first began working on this matter until we started 18:02:55
 12 the deposition this morning, do you have an estimate 18:02:58
 13 of how many hours you've spent on this matter? 18:03:01
 14 A Yeah. From what was the beginning 18:03:04
 15 time, I'm sorry? 18:03:09
 16 Q Whenever you started. 18:03:10
 17 A Whenever I started the matter until 18:03:13
 18 now? Approximately, I believe it is something like 18:03:14
 19 100 hours. 18:03:17
 20 Q And has anybody else connected with 18:03:17
 21 the law school provided any research or other 18:03:19
 22 assistance to you in connection with your work? 18:03:22
 23 A I have had -- I have been working 18:03:24
 24 mostly at home. I have had difficulty downloading 18:03:27

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1 PDF files, my secretary has assisted me in 18:03:30
 2 delivering PDF files. 18:03:35
 3 Q And other than secretarial assistance, 18:03:36
 4 have you had anybody doing any actual research to 18:03:39
 5 help you? 18:03:41
 6 A No, no. 18:03:41
 7 Q Who wrote your initial -- 18:03:42
 8 A Actually, let me back up. 18:03:44
 9 Q Yeah. 18:03:44
 10 A I have asked a librarian to pull some 18:03:46
 11 documents for me. But not doing actual research, 18:03:49
 12 just pulling documents. 18:03:52
 13 Q To pull documents that you identified 18:03:52
 14 yourself? 18:03:57
 15 A That I had previously identified, yes. 18:03:57
 16 Q Who wrote your initial report? 18:03:58
 17 A I did. 18:03:59
 18 Q Is every word in that initial report 18:03:59
 19 yours? 18:04:02
 20 A Yes. 18:04:02
 21 Q And did anyone other than yourself 18:04:02
 22 have any input on the initial report? 18:04:05
 23 A I had discussions with Mr. Collins 18:04:10
 24 about the questions that I was being asked. I also 18:04:13

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1 reviewing materials, correct? 18:15:43

2 A I prepared handwritten notes as I was 18:15:44

3 reviewing the exhibits and other materials in 18:15:47

4 connection with this. 18:15:52

5 Q So those are certainly part of the 18:15:52

6 work, the work product that you generated in terms 18:15:54

7 of your consideration of the substantive matters as 18:15:57

8 part of your engagement, correct? 18:16:01

9 A I don't think of them as product I 18:16:04

10 think of them as a way of indexing the information 18:16:06

11 that I reviewed. 18:16:09

12 Q They reflect your thought process, 18:16:09

13 right? 18:16:12

14 A Process, yes. 18:16:12

15 Q And did you refer to those notes as 18:16:13

16 you were preparing your report? 18:16:17

17 A Yes. 18:16:18

18 Q So you obviously relied on them, 18:16:18

19 correct? 18:16:23

20 A I think it's a strange question. The 18:16:23

21 notes were a way of my -- offering me a way to 18:16:28

22 reengage with the exhibits themselves. 18:16:33

23 Q Right And you looked at them as you 18:16:34

24 were working on your report? 18:16:37

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1 A Yes 18:16:38

2 Q Have you ever, while you were a 18:16:39

3 lawyer, had any complaints lodged against you in 18:16:48

4 connection with your professional work? 18:16:52

5 A No. 18:16:54

6 Q Have you ever been involved in any 18:16:54

7 lawsuits? Have you ever been sued? 18:16:59

8 A Not that I know of. 18:17:01

9 Q Have you ever been subject to any 18:17:03

10 disciplinary proceedings in connection with being an 18:17:08

11 attorney or otherwise? 18:17:11

12 A No 18:17:12

13 Q Any criminal record? 18:17:12

14 A No. 18:17:13

15 Q Ever been arrested? 18:17:14

16 A No. 18:17:18

17 Q In preparing your report, did you rely 18:17:18

18 in any way on the references in the documents to 18:17:49

19 possible transshipments going through either King 18:17:55

20 Par or Manatee? 18:17:59

21 A In preparing my reports, did I rely on 18:18:00

22 documents that referred to King Par or Manatee Golf? 18:18:03

23 If they were in the documents, I did. 18:18:07

24 Q And do you recall those names, King 18:18:09

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1 Par and Manatee? 18:18:12

2 A Yes. 18:18:13

3 Q And do you recall that there was 18:18:14

4 discussion in the documents about whether those two 18:18:17

5 authorized retailers had been involved in potential 18:18:20

6 transshipments? 18:18:27

7 A Can you ask that question again? I 18:18:28

8 was sort of flipping through the catalog in my head 18:18:32

9 of the documents. 18:18:33

10 Q Sure. Do you recall that there was 18:18:33

11 discussion in the documents about possible 18:18:37

12 transshipments going through King Par and Manatee? 18:18:39

13 A I don't recall right now. 18:18:42

14 Q In what way, if you recall, did you 18:18:46

15 rely on Manatee's or King Par's possibly involvement 18:18:49

16 as transshippers in preparing your report? 18:18:59

17 A I don't recall right now. 18:19:02

18 Q Do you recall any way in which Manatee 18:19:03

19 or King Par influenced your opinions in this matter? 18:19:07

20 A I don't recall right now. 18:19:12

21 Q In your report, your initial report 18:19:19

22 that is, on page 21. 18:19:21

23 MR. COLLINS: Now you are referring to 18:19:30

24 Exhibit 303, the final report? 18:19:32

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1 MR. GLUCKOW: Correct. I'm sorry. 18:19:34

2 BY MR. GLUCKOW: 18:19:34

3 Q The final report, 303, page 21, 18:19:36

4 Paragraph 30. The first line of Paragraph 30 says, 18:19:37

5 "At the time of its initial public offering, 18:19:40

6 Callaway had disclosed." I am assuming the "its" is 18:19:44

7 Adams, right? 18:19:44

8 A Yes 18:19:44

9 Q Okay. At the time of Adam's public 18:19:45

10 offering, Callaway had disclosed, and then you have 18:19:48

11 a disclosure from a Callaway public offering, 18:19:52

12 correct?

13 MR. COLLINS: No.

14 BY THE WITNESS:

15 A I'm sorry.

16 BY MR. GLUCKOW:

17 Q The Callaway 10K? 18:19:52

18 A Yes 18:19:53

19 Q Correct? 18:19:54

20 A Yes. 18:19:54

21 Q And then after the block quote, you 18:19:57

22 say that, "This is notable, because in determining 18:20:00

23 whether a given disclosure is necessary, it is 18:20:03

24 common to consult the risk factors described by 18:20:18

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1 others in a given market segment when drafting 18:20:21
 2 disclosure documents, such as the company's 18:20:24
 3 prospectus " Do you see that? 18:20:27
 4 A. Yes 18:20:28
 5 Q. What was or is the basis for your 18:20:29
 6 statement as to what is common in terms of drafting 18:20:33
 7 risk factors? 18:20:35
 8 A. My experience at Clifford Chance. 18:20:35
 9 Q. And what was that experience at 18:20:38
 10 Clifford Chance? 18:20:40
 11 MR. COLLINS: Asked and answered 18:20:40
 12 BY THE WITNESS: 18:20:40
 13 A. We have talked about my experience at 18:20:41
 14 Clifford Chance. 18:20:41
 15 BY MR. GLUCKOW: 18:20:41
 16 Q. Oh, so it's what we talked about 18:20:44
 17 before when you were a summer associate in London 18:20:45
 18 working on the -- 18:20:46
 19 A. No. I also worked at Clifford Chance 18:20:46
 20 after that time. 18:20:48
 21 Q. And did you have any involvement in 18:20:49
 22 advising clients? I think we have already 18:20:51
 23 established, in fact, that you did not have any 18:20:54
 24 involvement in advising clients on what should or 18:20:56

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1 should not go into risk factors when drafting SEC 18:20:59
 2 files, correct? 18:21:02
 3 A. I see a distinction between advising 18:21:02
 4 clients and observing others advising clients. 18:21:05
 5 Q. And you saw others advising clients? 18:21:08
 6 A. Yes. 18:21:10
 7 Q. And what did you see? 18:21:11
 8 A. What do you mean? 18:21:13
 9 Q. Well, do you consider yourself an 18:21:16
 10 expert on advising clients on what should or should 18:21:18
 11 not go in an SEC file? 18:21:22
 12 A. No. 18:21:24
 13 Q. Okay. And do you consider yourself an 18:21:24
 14 expert on what risk factors should or should not go 18:21:29
 15 in an SEC filing? 18:21:37
 16 A. No. 18:21:40
 17 Q. In fact, you have no knowledge one way 18:21:40
 18 or the other whether the company or the underwriters 18:21:47
 19 or the company's lawyers or the underwriter's 18:21:50
 20 lawyers or anyone else involved in drafting the 18:21:53
 21 prospectus actually looked at the Callaway 10K, 18:21:56
 22 isn't that true? 18:22:01
 23 MR. COLLINS: I need that question 18:22:01
 24 back, please. Say it again, please. 18:22:01

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1 MR. GLUCKOW: Read it back. 18:22:01
 2 (Record read.) 18:22:01
 3 BY THE WITNESS: 18:22:19
 4 A. I don't have actual knowledge, no. 18:22:19
 5 BY MR. GLUCKOW: 18:22:23
 6 Q. I am sure you agree that the mention 18:22:23
 7 of a risk in one company's disclosure, which may be 18:22:29
 8 true for that company, is in no way determinative of 18:22:35
 9 whether that same risk should go into another 18:22:38
 10 company's disclosure, correct? 18:22:41
 11 MR. COLLINS: Outside the scope. 18:22:43
 12 Go ahead. 18:22:44
 13 BY THE WITNESS: 18:22:44
 14 A. Not alone. Correct. 18:22:45
 15 BY MR. GLUCKOW: 18:22:45
 16 Q. Pardon me? 18:22:45
 17 A. Not alone. Correct. 18:22:45
 18 Q. Because every situation is different, 18:22:47
 19 correct? 18:22:50
 20 A. Correct. 18:22:50
 21 Q. And what is appropriate for one 18:22:50
 22 company may be inappropriate for another company, 18:22:53
 23 correct? 18:22:56
 24 MR. COLLINS: Outside the scope. 18:22:56

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1 Go ahead. 18:22:58
 2 BY THE WITNESS: 18:22:58
 3 A. Now we are into an area that I don't 18:22:58
 4 feel comfortable commenting on. 18:23:00
 5 BY MR. GLUCKOW: 18:23:00
 6 Q. Okay. 18:23:04
 7 MR. COLLINS: Counsel, you have 18:23:04
 8 one minute. 18:23:05
 9 MR. GLUCKOW: I have nothing further. 18:23:09
 10 MR. COLLINS: I have one question. 18:23:12
 11 EXAMINATION 18:23:12
 12 BY MR. COLLINS: 18:23:12
 13 Q. Do you recall Exhibit 7 to the Grace 18:23:15
 14 report? 18:23:15
 15 A. Yes. 18:23:20
 16 Q. You can pull it out, but you don't
 17 need to. If you recall it?
 18 A. I recall it. If we can pull it out,
 19 though, so I can have it in my hands, that would be
 20 great.
 21 Q. Sure. Does this support your view 18:23:44
 22 that gray marketing was increasing and was a serious 18:23:46
 23 risk for the IPO? 18:23:51
 24 A. Yes. 18:23:55

83 (Pages 326 to 329)